VZCZCXRO2394
RR RUEHRG
DE RUEHSO #0126/01 0651627
ZNR UUUUU ZZH
R 061627Z MAR 09
FM AMCONSUL SAO PAULO
TO RUEHC/SECSTATE WASHDC 8995
INFO RUEHBR/AMEMBASSY BRASILIA 0150
RUEHRG/AMCONSUL RECIFE 4317
RUEHRI/AMCONSUL RIO DE JANEIRO 9049
RUEHBU/AMEMBASSY BUENOS AIRES 3442
RUEHAC/AMEMBASSY ASUNCION 3689
RUEHMN/AMEMBASSY MONTEVIDEO 2869
RUEHSG/AMEMBASSY SANTIAGO 2689
RUEHLP/AMEMBASSY LA PAZ 4075
RUEHME/AMEMBASSY MEXICO 0873

UNCLAS SECTION 01 OF 03 SAO PAULO 000126

SIPDIS
SENSITIVE

STATE FOR WHA/BSC

E.O. 12958: N/A
TAGS: ELAB EFIN ECON EIND PGOV PHUM SOCI BR
SUBJECT: OUTDATED LABOR LAWS MAY ENCOURAGE LAYOFFS

REF: A. 06 Sao Paulo 280 B. 08 Sao Paulo 129
¶C. Sao Paulo 70

SENSITIVE BUT UNCLASIFIED--PROTECT ACCORDINGLY

¶1. (U) Summary: According to Brazilian labor economists, Brazil's outdated labor laws are inflexible and may result in companies laying off workers rather than preserving employment through negotiation in times of crisis. Therefore, some laws enacted to protect workers' rights paradoxically cause unemployment and push people into the informal sector. In addition, labor court interventions in large-scale layoffs may hamper a company's ability to follow even the rigid Brazilian labor laws and react adequately to the global financial crisis. Economists suggest a liberalization of the law to allow temporary contract renegotiations and a permanent modification of the law to help small enterprises reduce the costs of hiring formal sector employees. End Summary.

A GAME WHERE EVERYONE LOSES
- - - - - - - - - - - - - - -

¶2. (U) Brazil's labor laws were established in the 1940's by then President/dictator Getulio Vargas. Vargas established a corporatist system whose aim was capitalism tempered by social justice. The major sectors of the economy were organized into major interest groups (a.k.a. - corporations) and representatives of these interest groups settled differences through negotiation and joint agreement (collective bargaining). He established the labor collectives (unions) to represent workers, the Confederation of Industry (CNI) to represent business owners, and incorporated strict protections for workers into the Brazilian Constitution. Because workers' rights are embedded into the Constitution, any changes that could be interpreted as a reduction of workers' rights require constitutional amendment and are fraught with political delay and logrolling (Reftels A and B).

¶3. (U) The Brazilian Constitution defines a full time work week as an eight hour day with a maximum of 44 hours of work throughout the week (many laborers work half a day on Saturdays). With the economic downturn, the Federation of Industry of Sao Paulo (FIESP) and many of the hardest hit sectors are calling for salary reductions and reduced work weeks to help preserve employment. The major labor unions, the Central Worker's Union (CUT) and Union Force (Forca Sindical - FS) have had mixed reactions to these requests with CUT remaining steadfastly opposed to any measures that would touch workers' salaries or the work week and FS willing to negotiate (Reftel B). In a January 22, meeting between Poloff and Quintana Severo, CUT's General Secretary, Severo stated that CUT opposed any measure that would "exploit the current financial problems to roll back the rights gained by workers over long years of struggle."

¶4. (U) In a February 12 meeting, prominent labor economist and University of Sao Paulo Professor, Jose Pastore, explained to Poloffs how the highly structured Brazilian labor laws can actually increase unemployment in times of financial crisis. Pastore noted that because the constitution defines the work week, and salaries and benefits are so highly regulated, temporary reductions in hours or wages are dangerous for employers to negotiate. While these wage and salary reductions are technically possible, employers must prove that they are in dire financial straits. Usually, by the time they can prove that their financial situation is precarious enough to warrant an exemption from the law, it is too late to save the company, even with wage and hour reductions.

¶5. (U) Despite these legal obstacles, recent press reports sporadically note successful, finite contract renegotiations that include wage cuts and work week reductions. Pastore revealed that these contracts can leave employers vulnerable to future lawsuits. Even if workers and unions agree to the reductions, they retain the right to sue their employer years later for back wages and benefits. Furthermore, even if workers do not want to sue their employer, the unions and the Ministry of Labor can sue without the workers' consent. Given this precarious legal position, Pastore maintains that many companies choose to fire workers rather than risk the uncertainty of future lawsuits and costly judgments. Firing workers is also a very costly proposition in Brazil. Companies must contribute eight percent of a worker's monthly salary into a Guarantee Fund for Time of Service (FGTS), which an employee receives if they are fired without just cause. In addition, the company must pay an additional fine of fifty percent of all the accumulated funds in the worker's FGTS account upon dismissal.

Despite the exorbitant cost of firing, many companies choose this as the safest route to quickly reduce labor costs in a crisis. Pastore described the status quo as a "game where everyone loses."

¶6. (U) Recent economic reports seem to support Pastore's statement. On February 20, FIESP announced that for the first time since 1994, industries in Sao Paulo State (which accounts for forty percent of Brazilian industrial production) shed more jobs in January than they created. "Traditionally, January is a month where the number of industrial jobs grow, but this year, all the indicators show more layoffs," stated FIESP President Paulo Skaf. In a separate meeting with Ambassador Sobel on February 19, Skaf stated that the current economic situation was "difficult, at best."

¶7. (U) Recent lay-offs at Embraer highlight the problem. On February 19, Embraer announced that it would dismiss close to 4300 workers (20 percent of its workforce) due to weakening demand for aircraft. Union leaders claim that Embraer did not attempt negotiations with the unions prior to the announcement and Embraer continues to be publicly reluctant to negotiate. President Lula expressed public indignation and met with Embraer's President to ask him to look for alternatives to the layoffs. The President of the Bank of Economic and Social Development (BNDES), which owns non-voting shares of Embraer, reportedly also lobbied on behalf of the workers. Meanwhile, the unions took their case to the courts and asked the Regional Tribunal of Workers for Campinas (TRT de Campinas which covers Sao Jose dos Campos, the location of Embraer) to stop the layoffs. In a controversial move, the TRT decided to temporarily suspend the lay-offs pending negotiations between Embraer and its unions. (Note: Originally, the suspension was issued pending negotiations on March 5th but, when Embraer refused to reinstate the workers at that meeting, the TRT extended the suspension until another round of negotiations scheduled for March ¶13. End Note) Some union leaders have taken their demands a step further. Jose Maria de Almeida, General Secretary for Conlutas, the labor syndicate that includes the metal-workers union, told reporters "the government has been supporting Embraer and now it should reassume full control (i.e. - nationalize the company)." Despite Conlutas strong stance, several other unions counter-proposed work week reductions, wage concessions and voluntary retirements in exchange for maintaining workers' jobs.

¶8. (SBU) Comment: The situation with Embraer demonstrates the

difficulty of navigating Brazilian labor laws. Although Embraer appears to have followed the law, the labor courts still intervened suspending the layoffs. The legal basis for the intervention is fuzzy at best. Public discussion of the matter centers on standards set by the Organization for Economic Cooperation and Development (OECD) and the International Labor Organization (ILO) which encourage giving employees and unions notice and the opportunity to negotiate before a large scale layoff. In January, a similar case was brought by the Public Ministry of Labor (MPT) for Volta Redonda against National Steel Company. In that case, the MPT claimed that any "mass" layoff could only be enacted after negotiations between the company and unions failed. None of the press reports or official commentary cite an actual statute in Brazilian law that requires these notifications or negotiations. In fact, in a January meeting with Brian Finnegan, AFL-CIO Program Director for Brazil, Finnegan told Poloff that companies are specifically not required to give workers or labor unions notice prior to layoffs. The confusion surrounding the matter highlights the complexity of Brazilian labor laws and the difficult legal position of companies doing business in Brazil. End Comment.

TRUE IMPROVEMENT REQUIRES TRUE REFORM
- - - - - - - - - - - - - - - - - - - -

¶9. (U) Pastore has repeatedly called for labor law reform and blames strong worker's protections and the high cost of firing for feeding the informal economy. Estimates of the size of Brazil's informal economy range from as low as 40 to as high as 63 percent depending on how it is defined. Pastore noted that most small and micro enterprises cannot afford to pay all the benefits and taxes associated with hiring a formal sector employee. The eight percent monthly allocation into the FGTS plus the stiff fines associated with firing a formally hired worker discourage small enterprises from hiring formal workers in the first place. Pastore reiterated that while large scale labor law reform is needed, much could be accomplished just by relaxing the FGTS requirements for small and micro enterprises. Pastore recommended that the government provide industry with some relief by using its right to enact provisional

measures in times of crisis. He noted that if the government used it powers to temporarily allow industry to negotiate salary and work week reductions, it could ultimately save jobs as industry could negotiate these reductions free from fear of future reprisal.

¶10. (SBU) Comment: Uncertainty and costs in the labor market are a key variable in the "Custo Brazil", or cost of doing business in Brazil. In order to avoid additional layoffs, FIESP has called for a reduction in wages and work hours; however, the GOB has not publicly announced any plans to relax (even temporarily) Brazilian labor laws to allow companies to safely negotiate with employees. For many businesses, the risk of future lawsuits is simply too great and they therefore are opting to fire workers even with the high costs involved in doing so. While Brazil continues to weather the current economic crisis fairly well, outdated Brazilian labor laws create perverse incentives for employers that could drive higher unemployment and exacerbate the economic crisis. Moreover, unpredictable Brazilian labor courts that show a clear bias toward protecting labor, even at the risk of seriously crippling industry, likely are a factor that discourages foreign direct investment and the new job creation that it would generate. End Comment.

¶11. (U) This cable was cleared by Embassy Brasilia.
WHITE